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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALEXANDER FRAGANTE GUTIERREZ,

Petitioner,

v.

ALBERTO R. GONZALES^{**}, Attorney
General,

Respondent.

No. 04-72510

Agency No. A72-666-974

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted January 24, 2006^{***}
Seattle, Washington

Before: RAWLINSON, and CLIFTON, Circuit Judges, and MARSHALL,
District Judge. ^{****}

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} Alberto R. Gonzales is substituted for his predecessor, John Ashcroft, as Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

^{***} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

^{****} The Honorable Consuelo B. Marshall, Senior United States District Judge for the Central District of California, sitting by designation.

Alexander Fragante Gutierrez, a native and citizen of the Philippines, petitions for review of the decision of the Board of Immigration Appeals (“BIA”) affirming without opinion the Immigration Judge’s (“IJ”) denial of Gutierrez’s application for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252(b). We review for substantial evidence, *see Nahrvani v. Gonzales*, 399 F.3d 1148, 1151 (9th Cir. 2005), and we deny the petition for review.

Substantial evidence supports the IJ’s determination that Gutierrez’s experiences did not rise to the level of persecution. *See Nahrvani*, 399 F.3d at 1153 (holding that the threats failed to rise to the level of persecution because the threats were anonymous, vague, and did not create a sense of immediate physical violence). In addition, substantial evidence supports the IJ’s determination that Gutierrez’s fear of persecution is not objectively reasonable. *See Lim v. INS*, 224 F.3d 929, 934 (9th Cir. 2000). Neither Gutierrez nor his family was threatened, harassed, harmed, or contacted during the two years between the receipt of the threatening note and his family leaving the Philippines. *Cf. Borja v. INS*, 175 F.3d 732, 736-737 (9th Cir. 1999) (en banc).

Because Gutierrez did not establish eligibility for asylum, he did not satisfy the more stringent standard for withholding of removal. *See Alvarez-Santos v. INS*, 332 F.3d 1245, 1255 (9th Cir. 2003).

Relief under the CAT is unavailable because Gutierrez has not shown that it is more likely than not that he will be tortured if returned to the Philippines. *See Khup v. Ashcroft*, 376 F.3d 898, 906 (9th Cir. 2004); 8 C.F.R. § 208.16(c)(2) (2005).

Gutierrez's challenge to the BIA's summary affirmance procedure is foreclosed by *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 850 (9th Cir. 2003).

PETITION DENIED.